REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **LETTERS' PATENT APPEAL NO. 394 OF 2004**

% **Date of Decision** : 20th July, 2007.

S.L. SALUJA .... Appellant.
Through Mr. Rakesh Munjal, Sr. Adv. with Mr. S.S. Ray, Advocate.

VERSUS

STATE BANK OF INDIA & ANR. .... Respondents.
Through Mr. T.S. Doavia, Sr. Adv. with Mr. Rajiv Kapur, Advocate.

CORAM:

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J:

1. The appellant, Mr. S.L. Saluja has filed the present appeal against the judgment dated 9th February, 2004 dismissing the writ petition filed by him for quashing disciplinary proceedings that have been initiated against him.

2. The appellant joined the State Bank of India in 1967 as a clerk. He was promoted from time to time. He was working as an

officer in the senior management grade scale, when on 29th May, 1999 disciplinary proceedings were initiated against him.

3. During the pendency of the disciplinary proceedings, the appellant filed Civil Writ No. 2840/2000 challenging the same on the ground that he had retired from service in terms of Rule 19 of the State Bank of India Officers Service Rules after completing 30 years of pensionable service on 31st July, 1997 or at least after attaining age of 58 years on 31st December, 1999. The said contention did not find merit with the learned Single Judge who dismissed the writ petition, inter alia, holding that even after completing 30 years of pensionable service in July, 1997, the appellant had continued to be in employment and had drawn regular salary till his suspension on 1st August, 1997. Thereafter, he was paid suspension allowance. Learned Single Judge also made reference to the relevant rules under which an employee could continue in service till the age of 60 years. Learned Single Judge upheld the contention of the respondent bank that they had right to extend service of the appellant beyond 58 years as departmental proceedings under relevant rules had been initiated against him. The learned Single Judge also rejected the contention of the appellant that the order extending the service of the appellant beyond 58 years was null and void as it was

communicated after 31st December, 1999 vide letter dated 24th January, 2000 by relying upon judgment of the Supreme Court in Collector of Central Excise, Madras versus M.M. Rubber and Co. (1992) Supp. (1) SCC 471, inter alia, holding that an order or decision of the authority becomes operative and comes into force when it is signed or made. Thereafter, the said authority ceases to have *locus paetentiae* and right to re-draft and tear of the earlier order. The purpose and object of communication of the order passed is to make the party adversely affected, aware of the said order passed and also for the purpose of calculating limitation period. The decision of the Supreme Court in the case of Bachhittar Singh versus State of Punjab, AIR 1963 SC 395 was distinguished. Learned Single Judge also relied upon another decision of the Supreme Court in State Bank of India versus C.B. Dhull, (1998) 2 SCC 544 to uphold the right of the respondent bank to continue with the disciplinary proceedings after retirement of the appellant.

4. The relevant State Bank of India Officers Service Rules read as under:-

> "19. (1) An officer shall retire from the service of the Bank on attaining the age of fifty-eight years or upon the completion of thirty years' service or thirty years' pensionable service if he is a member of the Pension Fund, whichever occurs first.

Provided that the competent authority may, at its discretion, extend the period of service of an officer who has attained the age of fifty-eight years or has completed thirty years' service or thirty years' pensionable service as the case may be, should such extension be deemed desirable in the interest of the Bank, so however, that the service rendered by the concerned officer beyond 58 years of age except to the extent of the period of leave due at that time will not count for purpose of pension.

Provided further that an officer who had joined the service of the Bank either as an officer or otherwise on or after July 19, 1969 and attained the age of 58 years shall not be granted any further extension in service.

Provided further that an officer may, at the discretion of the Executive Committee, be retired from the Bank's service after he has attained 50 years of age or has completed 25 years' service or 25 years' pensionable service as the case may be, by giving him three months' notice in writing or pay in lieu thereof.

Provided further that an officer who has completed 20 years' service or 20 years' pensionable service, at the case may be, may be permitted by the competent authority to retire from the Bank's service, subject to his giving three months' notice in writing or pay in lieu thereof unless this requirement is wholly or partly waived by it.

19. (2) Notwithstanding anything to the contrary in these rules, no officer who has ceased to be in the Bank's service by the operation of, or by virtue of, any provision shall be deemed to have retired from the Bank's service for the purpose of the Imperial

> Bank of India Employees' Pension and Guarantee Fund Rules or the State Bank of India Employees' Pension Fund Rules unless such cessation of service has been sanctioned as retirement for the purpose of either of the said pension fund rules as may be applicable to him.
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> 19. (3) In case disciplinary proceedings under the relevant rules of service have been initiated against an officer before he ceases to be in the Bank's service by the operation of, or by virtue of, any of the said rules or the provisions of these rules, the disciplinary proceeding may, at the discretion of the Managing Director, be continued and concluded by the authority by which the proceedings were initiated in the manner provided for in the said rules as if the officer continues to be in service, so however, that he shall be deemed to be in service only for the purpose of the continuance and conclusion of such proceedings."

5. By circular dated 29th May, 1998, the retirement age of an employee working in the State Bank of India was extended from 58 years to 60 years. The said circular was followed by another circular dated 31st December, 1998, which reads as under:-

> "Consequent upon the decision taken by the Government of India to raise the retirement age of employees of Banks to 60 years from 58 years as circulated vide our circular No. CDOPER:27:98-99 dated 13.6.1998, the extension in service of our officials may be considered/reviewed by the bank as under:
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> First Stage On completion of 30 years of service/pensionable service or on attaining 55 years of age whichever occurs first, for grant of extension/continuation upto 58 years

of age.

Second Stage On attaining 58 years of age for grant of extension/continuation upto 60 years of age being the age of retirement".

6. The above circular states that on completing 30 years of service or on attaining 55 years, the bank has the right to consider and review whether or not to grant extension or continuation in service upto 58 years. Thereafter, when a person attains age of 58 years, the bank has the right to examine and decide whether or not to grant continuation or extension upto the age of 60 years.

7. However, before the said circular was issued and retirement age was increased to 60 years, under Rule 19(1) an employee retired on attaining age of 58 years or on completion of 30 years of service, whichever occurred first. The appellant completed 30 years on 5th July, 1997 and therefore under Rule 19(1) would have superannuated on 31st July, 1997. However, it is admitted fact that the appellant did not actually superannuate on the said date and continued to work and draw regular salary. The learned Single Judge has also recorded that till 31st December, 1999, the appellant who was under suspension w.e.f. 1st August, 1997 and drawing subsistence allowance, did not raise any objection. The respondent bank also treated the appellant to be in service. We entirely agree with the reasoning given by the learned Single Judge in this regard and hold that service of the appellant was

extended after completing 30 years of service after 31st July, 1977.

8. Regarding extension of service of the appellant beyond 58 years or after 31st December, 1999 is concerned, the documents placed on record clearly show that the competent authority before the said date had decided to extend the services of the appellant from 12th December, 1999 to 11th December, 2000 i.e. upto the age of 59 years. The competent authority had processed the file and had granted extension of time before the date of retirement of the appellant on 31st December, 1999. We had also called for the original records and find that the original note in this regard was prepared and approved by General Manager (D & DB) on 3rd December, 1999, General Manager (Commercial) on 6th December, 1999 and Chief General Manager on 15th December, 1999. Thereafter vide another note dated 15th September, 2000 his services were extended from 11th December, 2000 upto 11th December, 2001 i.e. upto the date he attains age of 60 years. The said orders have been passed by competent authority after recording the relevant facts including the fact that the appellant had been charge sheeted for a major penalty in respect of misconduct alleged. It is also recorded that Central Bureau of Investigation has registered a case against him, which is pending investigation.

9. We agree with the reasoning given by the learned Single Judge that the order or decision of the competent authority extending or directing continuation of service of an employee becomes effective from the date the order is signed by the competent authority. After signing the order, the competent authority loses its right or power to take a different decision. The date of communication of the said order is not relevant for determining whether the power/jurisdiction has been exercised within the prescribed time. The purpose of communicating an order is to inform the party concerned about the decision taken, bring the decision to the knowledge of the said person and for calculating the period of limitation. The order in fact is made on the date when it is signed and executed and not on the date when it is communicated. In addition to the judgment of the Supreme Court in the case of M.M. Rubber and Co. (supra), reference can be made to CIT verus Balkrishna Malhotra, (1971) 81 ITR 759. While examining provisions of Income-Tax Act, prescribing limitation period for passing of assessment orders, it was held that limitation period as prescribed is for passing of an assessment order and it was not necessary that the order should also be communicated to the assessee within the prescribed period.

10. In this regard we may also refer to Rules 19(2) and 19(3).

Rule 19(2) is in pari materia with Rule 20A of the previous Rules. The said Rule was considered by the Supreme Court in the case of State Bank of India versus C.B. Dhull (supra). In this case, the Supreme Court distinguished its earlier decision in the case of State Bank of India versus A.N. Gupta, (1997) 8 SCC 60, wherein Rule 11 of the Imperial Bank of India Pension and Guarantee Fund and some other provisions were interpreted. The Supreme Court noticed that under Rule 11 disciplinary proceedings could not be proceeded with after an employee has ceased to be in service of the bank but this was not the situation under Rule 20A, after the same was enacted with effect from 1st April, 1977. Under Rule 20A retirement under the relevant pension fund rules had to be sanctioned by the competent authority. Rule 20B which is pari materia with Rule 19(3) was also interpreted and it was observed as under:-

> "**17**. Under Rule 20-B disciplinary proceedings if initiated against an employee before he retires from service could be continued and concluded even after his retirement and for the purpose of conclusion of the disciplinary proceedings, the employee is deemed to have continued in service but for no other purpose. After the disciplinary proceedings were concluded, the State Bank directed that (1) sanction of Dhall to retire be withheld and (2) Bank's contribution to his provident fund accounts be forfeited. Under Rule 10 of the

> Pension Fund Rules, an employee dismissed from the Bank service for wilful neglect or fraud shall forfeit all claims upon the fund for pension. Dhall has not been dismissed from service though he was charged with wilful neglect and fraud. The question that arises for consideration is what is the effect of the direction of the State Bank that sanction to retire Shall be withheld. Here cessation of service of Dhall on retirement has not been sanctioned and accordingly as per the last portion of Rule 11 of the Pension Fund he forfeits all claims upon the fund for pension."

11. Under Rule 19(3) disciplinary proceedings initiated against an officer can be continued even if he has ceased to be in service by virtue of any Rules or provision at the discretion of the Managing Director. After the discretion is exercised, the proceedings can be continued and concluded by the disciplinary authority as provided in the Rules, as if the officer continues to be in service but such continuation is for the purpose of continuance and conclusion of the proceedings. The respondent bank had filed an additional affidavit of Mr. P.C. Rathore dated November, 2003 which is on record in the appeal paper book from page 236 onwards. Along with this affidavit, the respondent bank had also enclosed copy of letter dated 13th October, 2001 in which it has been specifically mentioned that the Managing Director of the respondent bank had accorded his approval for invocation of Rule

19(3) against Mr. S.L. Saluja for the limited purpose of continuing and concluding the disciplinary proceedings initiated against him. The said order was passed, after competent authority had already vide two orders dated 15th December, 1999 and 15th September, 2000 extended services of the appellant upto 11th December, 2001 i.e. the date on which the appellant would have attained the age of 60 years. Thus, the respondent bank has invoked Rule 19 (3) of the State Bank of India Officers Service Rules. The Managing Director has given direction for continuation of the disciplinary proceedings even after retirement of the appellant. In our opinion, the decision of C.B. Dhull's (supra) case is clearly applicable to the facts of the present case. Rule 19(3) has been invoked. Therefore, the disciplinary proceedings against the appellant can continue.

12. In view of the facts stated above, we do not find any merit in the present appeal and the same is accordingly dismissed. However, in the facts and circumstances of the case, there will be no order as to costs.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

JULY 20, 2007.
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